



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: North American Materials and Supply Association

File: B-224670

Date: September 22, 1986

DIGEST

Indian-owned firm that is a potential supplier or subcontractor is not an interested party for purposes of filing a bid protest alleging that a Bureau of Indian Affairs prime contractor has violated regulations concerning Indian preference. There is no indication that any subcontracts will be "by or for" the government, and the protester itself was not a bidder.

DECISION

The Native American Materials and Supply Association protests the award of a contract under invitation for bids No. N00-86-81, issued by the Bureau of Indian Affairs Navajo Area Office in Gallup, New Mexico.

We dismiss the protest.

The protester, which states that it is a 100 percent Indian-owned and managed firm, alleges that the apparent low bidder, the Navajo Engineering and Construction Authority, has indicated that it does not intend to subcontract with an Indian-owned firm. Such action, the protester asserts, violates two Federal Acquisition Regulation (FAR) clauses, 48 C.F.R. §§ 1452.204-71 (Indian Preference) and 1452.204-72 (Indian Preference Program) (1985).

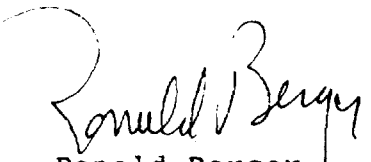
When it learned of the solicitation, the protester states, it contacted all bidders and requested them to consider it for the award of subcontracts. Navajo Engineering, the protester alleges, failed to give public notice of subcontracting opportunities; solicited bids from other than Indian firms; did not make a determination of either nonresponsiveness or price unreasonableness as to the protester's bid; refused an offer to negotiate prices; and generally did not attempt to

utilize an Indian-owned firm in the award of subcontracts for materials. The protester seeks either rejection of the bid or a requirement that Navajo Engineering comply with the FAR and use it as a supplier or subcontractor.

Our Office no longer considers protests from potential suppliers or subcontractors except where the subcontract is "by or for" the government. Analytics Communications System, B-222402, Apr. 10, 1986, 86-1 CPD ¶ 356; 4 C.F.R. § 21.3(f)(10) (1986). This is because, under the Competition in Contracting Act of 1984, 31 U.S.C. § 3551 (Supp. III 1985), only an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract" is an "interested party" and therefore eligible to protest to our Office. National Control Systems, Inc.--Request for Reconsideration, B-222537.2, June 18, 1986, 86-1 CPD ¶ 570.

There is no indication that any subcontracts to be awarded in this case will be "by or for" the government, and the Department of the Interior advises us that the protester itself was not a bidder for the prime contract.

Protest dismissed.



Ronald Berger
Deputy Associate
General Counsel